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obligation arising from the receipt of advances. It follows that the statute as amended is simply an indirect method of enforcing by a criminal penalty a form of involuntary servitude in liquidation of a debt, and in accordance with the foregoing principles it would seem to be clearly in contravention of the Thirteenth Amendment and the accompanying Federal legislation.

RESTRAINTS ON ALIENATION OF ESTATES IN FEE SIMPLE.—It is well established that an absolute restraint in any form on the alienation of an estate in fee simple is void.¹ A number of reasons have been assigned for this rule. In the first place, it has been said in explanation of its historical origin that inasmuch as the grantor since the enactment of the Statute *Quia Emptores* does not retain a possibility of reverter, he has no interest in controlling the future disposition of the property.² Furthermore, since the power to alienate is one of its necessary incidents, a restraint on the exercise of that right is repugnant to the nature of the estate created.³ While this theory of repugnancy has had great weight with the courts and justifies the prohibition of absolute restraints, its logical application would require that all partial restraints be held void as well. The ultimate basis for the doctrine, however, is to be found in considerations of public policy, as it is against the best interests of society to prevent the unrestricted transfer of property,⁴ and the justification of limited restraints must be sought, if at all, in the same considerations.

Although it has often been stated that a partial restraint on alienation may be good, no principle seems to have been developed to determine definitely what restraints are valid, but it has been said that the proper test should be whether the whole power of alienation is taken away substantially.⁵ While a restraint may assume either the form of a restriction depriving the grantee of the power to pass title, of a condition giving the grantor or testator and his heirs a right of entry for its breach, or of a conditional limitation defeating the estate and vesting it in a third party, it is generally held in spite of a number of intimations to the contrary,⁶ that the same rule should govern in each instance, since otherwise a landowner might be enabled to accomplish indirectly what he cannot do directly.⁷

¹Litt. § 360; Co. Litt. § 223a; Sheppard's Touchstone 129; Murray v. Green (1883) 64 Cal. 363; Freeman v. Phillips (1901) 113 Ga. 589; De Peyster v. Michael (1852) 6 N. Y. 467; Overbagh v. Patrie (N. Y. 1850) 8 Barb. 28; Pardue v. Givens (N. C. 1854) 1 Jones Eq. 306; Munroe v. Hall (1887) 97 N. C. 206.

²Co. Litt. § 223a; De Peyster v. Michael *supra*; Overbagh v. Patrie *supra*; see Blackburn v. McCallum (Can. 1903) 33 S. C. R. 65.

³Litt. § 360; Bacon's Abridgment, tit. "Conditions" L; De Peyster v. Michael *supra*; see Mandlebaum v. McDonnell (1874) 29 Mich. 78; Murray v. Green *supra*; Jones v. Port Huron Engine Co. (1898) 171 Ill. 502.

⁴Co. Litt. § 223a; De Peyster v. Michael *supra*; Overbagh v. Patrie *supra*. See Wool v. Fleetwood (1904) 136 N. C. 460; Walker v. Vincent (1852) 19 Pa. St. 369.

⁵*In re Macleay* (1875) L. R. 20 Eq. 186.

⁶See Mandlebaum v. McDonnell *supra*; Anderson v. Cary (1881) 36 Oh. St. 506; Wool v. Fleetwood *supra*.

⁷Gray, Restraints on Alienations § 12; *In re Dugdale* (1888) L. R. 38 Ch. Div. 176. In Tennessee, however, it seems that a conditional limitation may be valid where a restriction would not be. Fowlkes v. Wagoner (Tenn. 1898) 46 S. W. 586; Overton v. Lea (1902) 108 Tenn. 505, 554.

A restraint may be made partial in respect to the time during which it is to be enforced, the methods of alienation prohibited, or the individuals against whom it is directed. Inasmuch as a total suspension of the power of alienation, even for a limited period, takes away one of the inherent qualities of the estate, and is a substantial limitation on the powers of an owner, it is regarded as void both in England⁸ and America,⁹ except in Kentucky, where a total restraint for a reasonable time is permitted.¹⁰ The same rule is usually applied in the case of a restraint aimed at preventing particular methods of alienation. Thus a restriction prohibiting all modes of disposition except by will,¹¹ or except in exchange for other lands or for the purpose of reinvesting the proceeds in other real estate,¹² is an unreasonable deprivation of the rights of ownership and must consequently be invalid.¹³ Whereas restraints limited only as to time or method are thus held bad, the validity of a restraint directed against particular persons depends largely on the question whether alienation to specified individuals is prohibited or whether alienation only to certain persons is permitted. While it has been suggested in regard to the former case that technically the implied power to alien must necessarily include the right to alien to the individual named,¹⁴ nevertheless such a restraint does not substantially take away the power of disposition and has, therefore, been upheld, as not contravening the principles of public policy.¹⁵ On the other hand, a prohibition of alienation to any one except to specified persons, unduly deprives the grantee or devisee of the rights of an owner, particularly as an individual may be selected who it is known will refuse to purchase, and the rule against absolute restraints on alienation thereby evaded.¹⁶ It follows, therefore, that the only class of partial restraints

⁸*In re Roshier* (1884) L. R. 26 Ch. Div. 801; *Corbett v. Corbett* (1888) L. R. 14 P. D. 7; *Renaud v. Tourangeau* (1867) L. R. 2 P. C. 4.

⁹*Potter v. Couch* (1891) 141 U. S. 296, 314; *Jones v. Port Huron Engine Co. supra*; *Mandelbaum v. McDonnell supra*; *Twitty v. Camp* (N. C. 1866) Phil. Eq. 61; *Wool v. Fleetwood supra*; *Anderson v. Cary supra*; *Jaureche v. Proctor* (1865) 48 Pa. St. 466; *Zillmer v. Landguth* (1896) 94 Wis. 607; *Blackburn v. McCallum supra*.

¹⁰*Stewart v. Brady* (Ky. 1868) 3 Bush 623; *Stewart v. Barrow* (Ky. 1870) 7 Bush 368; *Wallace v. Smith* (1902) 113 Ky. 263; *Lawson v. Lightfoot* (Ky. 1905) 84 S. W. 739. A restraint during the lifetime of the devisee is not regarded as reasonable, however. *Harkness v. Lisle* (1909) 132 Ky. 767.

¹¹*Kaufman v. Burgert* (1900) 195 Pa. St. 274.

¹²*Hood v. Oglander* (1865) 34 Beav. 513.

¹³A different rule prevails in the Province of Ontario. *Earls v. McAlpine* (1879) 27 Grant Ch. 161, s. c. (1881) 6 Ont. App. 745; *Re Winstanley* (1884) 6 Ont. 315; *Re Martin & Dagneau* (1906) 11 Ont. L. 349. Such a conditional limitation, has been sustained, however, where it was to continue in effect for only a limited time. *In re Porter* L. R. [1892] 3 Ch. 481.

¹⁴*In re Roshier supra*, at 813.

¹⁵Litt. § 361; Co. Litt. § 223b; *Overton v. Lea supra*; but see *Morse v. Blood* (1897) 68 Minn. 442.

¹⁶*Attwater v. Attwater* (1853) 18 Beav. 330; *Schermerhorn v. Negus* (N. Y. 1845) 1 Denio 448; *Newland v. Newland* (N. C. 1854) 1 Jones L. 463; *Gallinger v. Farlinger* (Can. 1857) 6 U. C. C. P. 512. But see *Doe d. Gill v. Pearson* (1805) 6 East 173. Such a restraint has been allowed, however, where it referred only to a single mode of alienation, since the property could be disposed of to any one in any other method. *In re Macleay supra*; *O'Sullivan v. Phelan* (1889) 17 Ont. 730.

which may properly be imposed by a grantor or testator, are those which forbid a conveyance or devise to specified persons, leaving the owner free to alienate to any one else.

The problem as to the validity of a restraint aimed at preventing all alienation except to particular persons was recently presented in *Manierre v. Welling* (R. I. 1911) 78 Atl. 508. In that case the testator devised his real estate in equal shares to his children and to the children of those of them who were dead, and provided for an executory devise over in case any devisee alienated or devised his portion to any one other than a descendant of the testator, or to the wife or husband of some descendant for life, without the consent of all descendants then living and of full age. Inasmuch as this stipulation restricted the power of alienation to a comparatively small class of persons, it was clearly a substantial limitation on the rights of ownership, and was, therefore, properly held invalid.

PLAINTIFF'S DIVORCE AS A STATUTORY DEFENCE TO AN ACTION FOR ALIENATION OF AFFECTIONS.—The fact that marriage, although exhibiting certain contractual attributes,¹ is in reality a status² indicates that the effect of its dissolution upon the rights arising during its continuance must be determined both by the relation which they bear to the status itself and by the nature of the decree by which it is dissolved. In the event of an annulment, since the marriage is thereby rendered void *ab initio*, all rights which have grown up under it are naturally destroyed.³ A divorce, however, does not operate thus retrospectively but in effect affirms the fact of the marriage and confers upon the parties a new status rather than revives their pre-marital condition.⁴ Nevertheless, those rights which depend for their existence upon the continuance of a marital relation must necessarily be terminated by this change of status. On the other hand, those rights which are not so essentially incidents of the marriage as to be incapable of existing independently of it will survive its dissolution. It is in accordance with this principle that the wife retains her husband's legal settlement⁵ and a claim for support in the form of alimony,⁶ and that the husband is still immune from liability for an assault committed by him upon his wife during coverture.⁷

Since the right to the wife's consortium is dependent on the existence of the marriage relation, it is clearly of the former class and consequently is extinguished by divorce. It does not follow, however, that a cause of action predicated upon a loss of consortium is similarly contingent. This latter right is indeed a chose in action⁸ quite distinct from the marital right itself, and just as an action

¹Keyes v. Keyes (1851) 22 N. H. 553.

²Noel v. Ewing (1857) 9 Ind. 37; Adams v. Palmer (1863) 51 Me. 480.

³2 Bishop, Mar. Div. & Sep. §§ 855, 1597.

⁴2 Bishop, Mar. Div. & Sep. §§ 1623, 1670.

⁵Inhabitants of Dalton v. Inhabitants of Bernardstown (1812) 9 Mass. 201.

⁶Romaine v. Chauncey (1892) 129 N. Y. 566; 10 COLUMBIA LAW REVIEW 555.

⁷Abbott v. Abbott (1877) 67 Me. 304.

⁸Campbell v. Perry (1890) 9 N. Y. Supp. 330; Cincinnati v. Hafer (1892) 49 Oh. St. 60.